species of property is liable for the payment of debts; and only those articles specified by statute can be held to be exempt. 11 R. C. L., p. 489.

It is obvious that our statutes which exempt life insurance effected by a husband on his own life from execution or attachment for the debts of the insured (Shannon's Code, sections 4231 and 4233) have no application to the instant case, and we are not aware of any statute of this State which provides or attempts to provide, for such an exemption as that here claimed by the plaintiff in error."

Cravens v. *Robbins,* 8 Tenn. App. 437.

The "Supplementary Contract" of health indemnity is not an "insurance policy" within the meaning of the bankrupt law. The precise question has been decided by the highest court in Mississippi. The insurance policy and the supplementary contract for health indemnity were like the ones here involved. The Court said:

"In the case at bar, the money involved is in no proper sense the proceeds of a life insurance policy. It is true that it arises out of one of the provisions of a policy of insurance on the life of the appellee, but this provision is a contract of indemnity wholly separate from the contract to pay a fixed sum upon the death of insured. The statute provides that the proceeds of a life insurance policy payable to the executor, or administrator, of the insured shall inure to the heirs or legatees freed from all liability for the debts of the decedent. In the contract of insurance upon which the appellee recovered, the life insurance is payable to the executor, administrator, or assigns of the decedent, while the disability benefit is payable to the insured."

Chattanooga Pipe Works v. *Dumler,* 62 A. L. R. 1003. 153 Miss., 276.

Such was the holding of the Tennessee Court of Appeals just quoted.

The logic of the holdings of this Court lead to the same result. In Burlingham v. Crouse, a leading case on the subject of exemptions of life insurance under the bankruptcy laws, it was said:

> "It is the twofold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors, and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed. We think it was the purpose of Congress to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset; otherwise to leave to the insured the benefit of his life insurance." 228 U.. 473. (57: 927.)

When the indemnity payments here involved are sequestered and used to pay the bankrupt's debts it will not affect in any way his life insurance for the benefit of his wife and children. There will be no more premiums to pay on the life policy unless Legg should be restored to health. The health indemnity was a personal asset of Legg long before he filed his petition in bankruptcy, and passed to the trustee as a cash asset, leaving to the bankrupt's wife and children the benefit of his life insurance. This is, as said by this Court, the way Congress intended it should be.

It is said and many times repeated in Appellant's Brief that the life policy and the indemnity contract are but one contract and inseparable. In proof of this the paragraph in the Supplementary contract commencing "This Supplementary Contract shall be deemed to be a part of the above numbered Policy" etc., naming certain things in the Policy that are to be read into the

contract, is quoted. (Brief, 13.) The Brief omits the last and controlling sentence in the paragraph as follows:

> "No other provision of said Policy shall be held or deemed to be a part hereof except"—(setting out the two provisions, a and b, not here involved). (R. 6C.)

The Supplementary Contract shows affirmatively that it was a part of the insurance policy only for a limited and definite purpose, and that the two were necessarily separable.

Supplementary Indemnity Contract is not an Annuity.

If, however, the Court should find that the Indemnity feature was an insurance policy within the meaning of the bankrupt law, it would not affect the result. The payments thereunder represent the "cash surrender value" of such policy, which are subject to the payment of the bankrupt's debts by the express provision of the bankrupt law.

The contention of appellants is that the Indemnity payments are exempt under the following Tennessee statute:

> "The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the effective date of this Code, whether or not the right to change the named beneficiary is reserved by or permitted to such person." (Code, 8458; R. 23.)

This statute has no application here because the Health indemnity contract was not "made for the benefit of, or assigned to", any of the relatives named in the statute. The contract was to "pay to the insured, or a person designated by him for that purpose". (R. 6C, 2.) No person was so designated.

The question of any annuity contract is irrelevant. We may concede that it is an annuity and the same result would obtain. If an annuity it does not come within the reach of the exemption statute just quoted. The statute applies only to "any annuity contract upon the life of any person made for the benefit of, or assigned to the wife or children or dependent relatives of such person."

The contract was not made for the benefit of any of the dependent relatives designated by the statute to receive it. It was made for the benefit of the insured alone, and the exemption does not apply to him.

Sparkman v. *Chandler*, 162 Tenn., 614.

Such is the common law.

Bank v. *Clement*, 256 U. S. 126. (65: 858).

This Court will willingly follow the construction given to the Tennessee exemption statute by the highest court in that state. An insolvent debtor bequeathed a life insurance policy, payable to his estate, to his niece. He was survived by his widow and children but they made no claim to the insurance. For the reason that the niece was not one of the next kin named in the exemption statute, not being a "dependent" relative, it was held that the proceeds of the insurance policy were liable

for the payment of his debts in preference to the bequest to the niece.

Sparkman-Thompson v. *Chandler*, 162 Tenn., 614.

It was further held in that case that an insurance policy owned absolutely by the insured may not be bequeathed or devised by way of gift to others not named in the statute so as to defeat the payment of his just debts. (Page, 620.)

That reasoning applies here. The indemnity policy belonged absolutely to the bankrupt, Legg. It was made payable to him and was never assigned to any one else. He had personally been collecting and using the indemnity payments for two or three years.

We think Prof. Eager is wrong, whether "tragically" or otherwise, in saying that the Court of Appeals was in error "in holding that the monthly payments to which a discharged bankrupt is entitled by reason of total disability, under an insurance policy which had no cash surrender value * * * belong to the trustee in bankruptcy." (Appellant's Brief, 5.)

There is error in almost every line: (1) In supposing that these monthly payments were under an insurance policy; it was an indemnity health policy, separate from and supplemental to the insurance policy. (2) In saying that the policy had no cash surrender value. It had a cash surrender value of $174.52 every month—less $40.00 monthly exemption under statute. Legg was 42 years old at the time he became totally disabled. (Appellant's Brief, 1 and 2.) The Supplemental indemnity

feature limits payments thereunder to the age of 60 years. A total cash surrender value, if required, could be ascertained (a) by a simple calculation of the amount of these payments for 18 years, less six per cent; or (b) the interest in Legg's indemnity, less $40.00 per month exemption, could be sold as a whole, by order of the bankrupt court, and the proceeds applied to the payment of his debts. This would test whether or not the indemnity had a cash surrender value. (c) Or the case could be held in the bankruptcy court until the monthly payments liquidated the debt.

The U. S. Circuit Court of Appeals, First Circuit, held that a trustee in bankruptcy could not have an annuity contract, procured by the bankrupt by the fraudulent use of funds, set aside and the funds reached, because the Insurance Company had no notice of the source of the bankrupt's funds. But the Court said:

> "The contingent right of the insured, like the statutory right to seize and hold and sell remainder and contingent interests in real estate, is doubtless something that the trustee may seize and hold for the benefit of the creditors, or doubtless he may waive it altogether under circumstances which justify it."

Mutual Life Ins. Co. v. *Smith,* 184 Fed. 1.

The bill was dismissed "without prejudice to any right the trustee may have to claim whatever beneficial interest the bankrupt has, or may hereafter have, under the insurance contracts described in the bill."

The same principle and the same reasoning will be found in Suskin & Berry v. Rumley, Trustee, by the Circuit Court of Appeals, 4th Circuit. 37 Fed. (2nd) 304.

There is another reason why, under the bankrupt law, the interest in the indemnity monthly payments to Legg may be reached by creditors, independent of any question of insurance.

By section 70a (5) it is provided that the trustee in bankruptcy shall be vested with the title to "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

1. The bankrupt could have transferred the indemnity payments by express provision of the Supplemental Contract which provides that upon his becoming totally and permanently disabled, the Company will pay to the insured, "or a person designated by him for that purpose" etc. R. 6C, (2).

(2) The indemnity payments could have been levied upon by execution and garnishment, or by attachment proceedings. So that clearly the indemnity payments were assets of the bankrupt's estate.

Nor will the proviso in this section of the bankrupt law, as to insurance policies, avail Legg, the bankrupt. We copy the proviso, for convenient reference:

Section 110 (a) (5), Title 11, U. S. C.:

> "Provided, when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors partici-

pating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets. * * *." (R. 23.)

The bankrupt did not exercise his option to ascertain the cash surrender value of the policy and pay or secure to the trustee the sum so ascertained, and the policy, even if it be treated broadly as an insurance policy, passed to the trustee as assets, under express provision of the bankrupt law.

This is a complete answer to Prof. Eager's opinion that the Court should have held "that the contract, in its broad terms, is a life insurance policy, and that the total disability benefits came within the exemption clause." If an insurance policy, how could it come within the exemption clause when the bankrupt did not do the things required to bring it within that clause?

The learned opinion of the Referee reviewing the authorities, approval by the District Judge, and the short, clear, crisp, and convincing opinion of the Court of Appeals, leave little to be said in support of the judgment in this case.

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